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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,799	09/16/2002	Linda A. Young	112701-338	9555

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/070,799	Applicant(s) YOUNG ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24, 30-33 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24, 30-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. hickory-it is not in the specification.

Claim Rejections - 35 USC § 102

Claim 1, 4, 6, 10, 12, 13, 15, 16, 19-24, 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated SHIELDS, Jr et al 6156355

Long-chain fatty acids (column 6, lines 15-18; and column 6, lines 45-51) Inulin and FOS (column 11, lines 32-50) from chicory and yucca or tomato pomace and lactobacillus and other probiotics (column 11, line 65; column 12, line 8) are incorporated into dog diets. So is yeast (examples 1-6).

Zinc (column 6, line 7) is present. Methods of feeding to maintain and improve health and nutrition and prevent nutritional problems (column 7) inclusive of the instant healthy skin and coat function, as shown at column 10, lines 36-38, and column 15, lines 33-35 and examples 5 and 6.

The feeds of SHIELDS all are designed to be fed to any dog to endure nutritional adequacy (column ----, line 67; column 7, line 18) and wellness. The feeding of the diets is repeatedly stated to maintain healthy skin and hair (examples 5 and 6) hound and herding dogs thus regardless of the mechanism, will result in the claimed effects.

Claim Rejections - 35 USC § 103

Claims 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24, 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over LOWE '88 in view of Marsh-WO 98/56263 & Shields & LAB DIET '98, Matsuura et al 5756088 & Cavadini et al EP 0862863.

Art Unit: 1615

LOWE shows nutritional dysfunction in dog diets in part due to allergies, exhibiting effects on skin (p 280). Soya is seen as an allergen (page 281, top). Improvement is stated to result from yeast and probiotics included in the diet (page 285).

SHIELDS shows incorporation of these considerations in improved diets. Brewers yeast are utilized, as is zinc and prebiotics (see above) including canola oil rather than soy.

MARSH also supplements dog diets, including added supplements (page 6) of long chain fatty acids and zinc from soybean oil or safflower oil or other oils (page 6, lines 9-14), Exemplified at p 17 as safflower added to the diet as required. Thus, choice of soy or safflower or animal oil/fat would be obvious to the artisan to substitute, as a linoleic acid supplement, for skin coat enhancement or improvement (page 1, top) as evaluated by GLASS (page 12-14) and other parameters. Included in the supplement was Brewers yeast (p 16) the LOWE probiotic, and also an additive of SHIELDS.

MATSUURA also provides supplements for skin improvement (column 33) of fatty acid and probiotics.

CAVADIN is cited to show the level of probiotic cells one would add to a pet food diet: 10 to the 4th to 10 to the 10th (page 5, lines 22-26) to provide daily diets of up to 10-12 cells (page 5, lines 54-57). Dried yeast are shown (p 8, bottom) as is bifidobacterium. Formulation with prebiotic, inulin, (page 4, top) chicory is also taught.

Thus, one in the art would find it obvious to utilize a supplement of prebiotic and probiotic of CAVADINI with a linoleic oil source, to be added to a pet diet, as shown by MARSH or MATSUURA I order to provide and maintain healthy skin and hair.

The selection of each ingredient is a result effective parameter chosen to obtain desired effects. It would be obvious to vary the concentration of ingredients to optimize the effects desired-better health, hair, bone growth, performance, for example, and the use of additives functionally for which they are known to be used is not a basis for patentability.

It would have been obvious at the time of the instant invention for one of ordinary skill in the canine feed arts to incorporate these ingredients of known efficacy with known diets. It would be within the purview of one in the pet arts to find it obvious to apply the desired amounts and proportions nutrient and dietary aids to optimize desired effects. Further, no objective showing of non-obvious or unexpected results is shown by the applicant to distinguish over the prior art use of the particular ingredients.

Art Unit: 1615

There are no unusual and or unexpected results obtained since the prior art is well aware of the use of prebiotics and probiotics, mineral, and fatty acids as supplements with plant components.

Applicant's arguments filed 8/21/06 have been fully considered but they are not persuasive. .

applicant's arguments are that there are no improvements & no skin deficiencies in the prior art cited, nor are the three components of the claimed nutritional agent administered. See rejections-improvement and deficiencies (not instantly claimed) are addressed as is the step of administering the claimed agent, thus leading to the claimed methods of skin effects.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NEIL LEVY
Primary Examiner
Art Unit 1615
